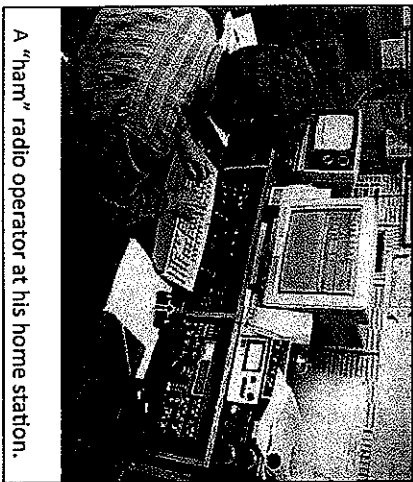


When All Else Fails



A "ham" radio operator at his home station.

Federally licensed amateur radio operators often assist the National Weather Service during severe weather through an organization called Skywarn. Using personal equipment and operating from their homes, Emergency Operations Centers, and personal vehicles, they are often credited with saving lives and property by providing an early warning. A recent example of this was the Dexter tornado in Washtenaw County.



No Cost to Michigan Government, or its Taxpayers

Here is an opportunity to assist over 20,000 amateur operators in Michigan; an opportunity where helping them, helps us all. Although federal preemption statutes require local governments to accommodate antennas and their structures, amateur radios operators and their local governments are still spending far too much on hearings, staff, attorneys, and time.

Amateur Radio operators have a long history of rising to the occasion when all else fails. The reason that they are so successful operating in disasters is that they require no infrastructure. The ability to communicate without infrastructure is a large measure of their value to their communities and to the nation. In order to do this, they require antennas and related support structures.

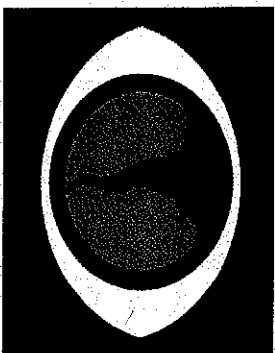
In the past 12 months, amateur radio operators in Michigan have donated over 100,000 hours engaged in public service and emergency operations. Emergency Management Agencies count on their "ham radio" volunteers on a daily basis in ways that are impossible to accomplish otherwise.



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SKYWARN

History

Since PRB-1 was issued by the FCC, Radio Amateurs have found that the zoning boards of local municipalities do not give adequate consideration to FCC Regulations in making zoning decisions. So beginning in the 1990's, amateurs began lobbying for legislation that would place PRB-1 type language into their State Laws. So far, 29 States have passed PRB-1 legislation. Great Lakes States that have passed similar bills include Ohio, Indiana, Illinois and Wisconsin.

The time has come for Michigan to pass PRB-1 legislation. Your interest, action & motivation will assure its passage in 2012.

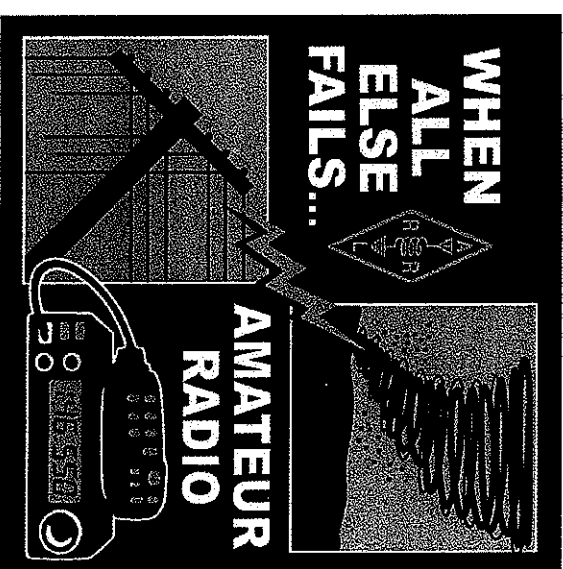


The Issues Faced By Amateur Radio Operators Today

- Amateur Radio Operators are a valuable asset to communities, but they need antennas to communicate
- Amateur Radio operators are almost exclusively located in residential areas and use radio as a personal hobby, but are often severely restricted by local zoning ordinances and by homeowners association covenants
- Amateur Radio operators are licensed by the FCC and do not participate in frequency auctions
- Zoning authorities are required to reasonably accommodate the antenna needs of Amateur Radio operators as stated in PRB-1 and various court cases
- Amateur Radio operators are prohibited by the FCC from conducting business on the air

Senate Bill No. 1244

A bill to provide protections to Amateur Radio operators from restrictive local ordinances.

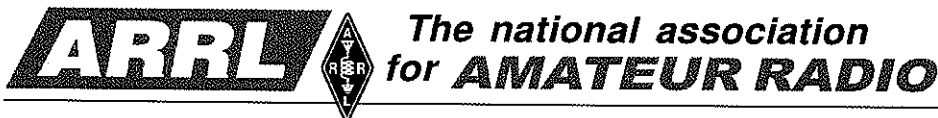


Senate Bill No. 1244

A local unit of government shall not adopt an ordinance that precludes federally licensed amateur radio service communications.

A local unit of government shall not restrict antennas or antenna support structures of amateur radio operators unless the restriction is shown by clear and convincing evidence to be necessary to achieve a defined health, safety, or aesthetic objective of the local unit of government.

Larry Camp



Section Manager

Larry Camp, WB8R
71 Oakdale Lane
Coldwater, Mi 49036

Before the Michigan Senate

Local Government and Elections Committee

Senator David Robertson, Chairman

Chairman Robertson and members of the Committee:

My name is Larry Camp and I am the Michigan Section Manager for the American Radio Relay League (ARRL), a member organization and represent 21,000 amateur radio operators of the State of Michigan.

Amateur radio (or "ham radio" as it is also known) plays a large part in the emergency preparedness of the State of Michigan and its communities. Amateur radio is part of the emergency plans of the Michigan State Police Emergency Management and Homeland Security Department. The State Emergency Operating Center (SEOC) has permanent amateur radio installations alongside the other agencies that participate in emergencies and drills when the SEOC is activated by the state government. Hundreds of hams voluntarily take FEMA courses on their own time in order to become better able to assist in an emergency.

There are more than 705,000 federally licensed amateur radio operators in the U.S. and 150,000 of them are members of the American Radio Relay League (ARRL), the national association for amateur radio. The ARRL provides services and sponsors training for hams in addition to serving the hobby aspect of ham radio. The everyday operating activities of hams provides valuable knowledge and experience that can be pressed into service in an emergency.

Amateur radio operators are federally licensed operators who have each passed tests in order to obtain their licenses. Michigan has more than 21,000 amateur radio operators, of which many volunteer hundreds of hours each year to provide no-cost services to their fellow citizens. They generally use their own equipment, and volunteer their own time to be trained in various ways to fit in with and assist the public safety community when disaster strikes. Each year Michigan hams provide as many as 100,000 or more volunteer hours which have a value of nearly \$2,000,000. Without the hams this work would go undone, or others would have to be paid to perform those tasks.

Hams are at the forefront of many activities such as Skywarn, a NOAA NWS program of trained weather spotters. As recently as March, 2012 an EF-3 tornado (storm strength ratings from EF0-EF5) struck Dexter, MI in Washtenaw County. Remarkably, there were no serious injuries and no deaths reported as a result of the storm in spite of significant damage. Public safety officials in Dexter give credit for the lack of injuries and deaths to the advanced warning that was received prior to the tornado striking Dexter. It was ham radio operators that provided emergency management with the early warning so that the sirens could be activated. It was ham radio operators that help test those warning sirens every month. This is a scene that is played out over and over again across the state and the country every year. Hams voluntarily go out into harm's way to help protect the citizens of their community.

Many times power outages and other events devastate our modern communications equipment. Most cell phone equipment has back-up power that may last for 12 hours or so, but eventually the system will fail without commercial power. Often the first thing that happens in a widespread emergency is that the telephone system becomes unusable due to overloading. This has been proven to be true over and over again, just as it was on September 11, 2001 in New York City, when hams rose to the occasion to provide communications when the commercial systems failed and the public safety systems located atop the World Trade Center towers were destroyed in the attack. Ham radio is so effective in disasters because it needs no infrastructure to operate. Hams can build their networks from the ground up as needed and can operate when commercial cell towers and internet systems fail.

Amateurs participate in emergency preparedness activities as well as short, medium and long range message handling activities. This message handling activity is practiced on a daily basis by many hams.

To see the value of this message handling capability, one only needs to consider how to get a written message to Lansing requesting aid from the remote portions of the state when the internet is down.

In order to be able to provide communications in times of emergency, hams need to have antennas and not be unnecessarily restricted. Federal regulation (PRB-1) states in part that a local unit of government shall not adopt an ordinance that precludes federally licensed amateur radio service communications.

The purpose of Senate Bill 1244 is to put language into state law that encompasses the Federal regulation known as PRB-1. Many local communities are not aware of the federal regulation and may unknowingly over restrict an amateur operator. Often this over restriction ends up in court with both the amateur and the community spending large amounts of money. Experience has shown that in many cases the amateur will win his case on appeal, which often means that the restricting entity is responsible for the costs of said appeal. This is money that could be better spent elsewhere.

SB1244 is no-cost legislation for the State of Michigan. Instead of costing money, it will save money by helping to ensure that local communities do not over-regulate radio amateurs in the first place. The legislators of our neighboring states such as Ohio, Indiana, Illinois and Wisconsin have already acted to codify PRB-1 into state law. A total of 29 states across the country have taken this step. Michigan should be the 30th state to do this.

We are requesting additional language be added to SB 1244 to add clarity to the process:

Any legislative authority that denies an application for approval of an amateur station antenna structure shall state the reasons for the denial and shall, in any litigation or on appeal, bear the burden of proving by clear and convincing evidence that the authority's actions are consistent with this section.

Amateur radio is a large part of the State of Michigan's backup communication plan and needs to have SB1244 passed into law in order to provide the best opportunity for hams to be able to effectively respond to any emergency, natural or manmade.



Larry Camp, WB8R
Michigan ARRL Section Manager



Edward Hude, WA8QJE
Michigan State Government Liaison

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- ▶ [Footnotes](#)

Adopted 9/16/1985

Released 9/19/1985

MEMORANDUM OPINION AND ORDER (FCC 85-506)

Federal preemption of state and local Regulations Pertaining to Amateur Radio Facilities

Before the Federal Communications Commission Washington, D.C.
20554 36149

By the Commission: Commissioner Rivera not participating.

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Background

1. On July 16, 1984, the American Radio Relay League, Inc. (ARRL) filed a Request for Issuance of a Declaratory Ruling asking us to delineate the limitations of local zoning and other local and state regulatory authority over Federally-licensed radio facilities. Specifically, the ARRL wanted an explicit statement that would preempt all local ordinances which provably preclude or significantly inhibit effective, reliable amateur radio communications. The ARRL acknowledges that local authorities can regulate amateur installations to insure the safety and health of persons in the community, but believes that those regulations cannot be so restrictive that they preclude effective amateur communications.

2. Interested parties were advised that they could file comments in the matter. ¹ With extension, comments were due on or before December 26, 1984², with reply comments due on or before January 25, 1985³. Over sixteen hundred comments were filed.

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[PRB-1 \(1985\)](#)

[PRB-1 \(1999\)](#)

[PRB-1 \(2000 - Reconsideration\)](#)

[PRB-1 \(2001\)](#)

47)

ULSUniversal Licensing
SystemWTBWireless
Telecommunications
Bureau**Local Ordinances**

3. Conflicts between amateur operators regarding radio antennas and local authorities regarding restrictive ordinances are common. The amateur operator is governed by the regulations contained in Part 97 of our rules. Those rules do not limit the height of an amateur antenna but they require, for aviation safety reasons, that certain FAA notification and FCC approval procedures must be followed for antennas which exceed 200 feet in height above ground level or antennas which are to be erected near airports. Thus, under FCC rules some amateur antenna support structures require obstruction marking and lighting. On the other hand, local municipalities or governing bodies frequently enact regulations limiting antennas and their support structures in height and locations, e.g. to side or rear yards, for health, safety or aesthetic considerations. These limiting regulations can result in conflict because the effectiveness of the communications that emanate from an amateur radio station are directly dependent upon the location and the height of the antenna. Amateur operators maintain that they are precluded from operating in certain bands allocated for their use if the height of their antennas is limited by a local ordinance.

4. Examples of restrictive local ordinances were submitted by several amateur operators in this proceeding. Stanley J. Cichy, San Diego, California, noted that in San Diego amateur radio antennas come under a structures ruling which limits building heights to 30 feet. Thus, antennas there are also limited to 30 feet. Alexander Vrenlos, Mundelein, Illinois wrote that an ordinance of the Village of Mundelein provides that an antenna must be a distance from the property line that is equal to one and one-half times its height. In his case, he is limited to an antenna tower for his amateur station just over 53 feet in height.

5. John C. Chapman, an amateur living in Bloomington, Minnesota, commented that he was not able to obtain a building permit to install an amateur radio antenna exceeding 35 feet in height because the Bloomington city ordinance restricted "structures" heights to 35 feet. Mr. Chapman said that the ordinance, when written, undoubtedly applied to buildings but was now being applied to antennas in the absence of a specific ordinance regulating them. There were two options open to him if he wanted to engage in amateur communications. He could request a variance to the ordinance by way of a hearing before the City Council, or he could obtain affidavits from his neighbors swearing that they had no objection to the proposed antenna installation. He got the building permit after obtaining the cooperation of his neighbors. His concern, however, is that he had to get permission from several people before he could effectively engage in radio communications for which he had a valid FCC amateur license.

6. In addition to height restrictions, other limits are enacted by local jurisdictions -- anti-climb devices on towers or fences around them; minimum distances from high voltage power lines; minimum distances of towers from property lines; and regulations pertaining to the structural soundness of the antenna installation. By and large, amateurs do not find these safety precautions objectionable. What they do object to are the sometime prohibitive, non-refundable application filing fees to obtain a permit to erect an antenna installation and those provisions in ordinances which regulate antennas for purely aesthetic reasons. The amateurs contend, almost universally, that "beauty is in the eye of the beholder." They assert that an antenna installation is not more aesthetically displeasing than other objects that people keep on their property, e.g. motor homes, trailers, pick-up trucks, solar collectors and gardening equipment.

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Restrictive Comments

7. Amateur operators also oppose restrictions on their amateur operations which are contained in the deeds for their homes or in their apartment leases. Since these restrictive covenants are contractual agreements between private parties, they are not generally a matter of concern to the Commission. However, since some amateurs who commented in this proceeding provided us with examples of restrictive covenants, they are included for information. Mr. Eugene O. Thomas of Hollister, California included in his comments an extract of the Declaration of Covenants and Restrictions for Ridgemark Estates, County of San Benito, State of California. It provides:

"No antenna for transmission or reception of radio signals shall be erected outdoors for use by any dwelling unit except upon approval of the Directors. No radio or television signals or any other form of electromagnetic radiation shall be permitted to originate from any lot which may unreasonably interfere with the reception of television or radio signals upon any other lot."

Marshall Wilson, Jr. provided a copy of the restrictive covenant contained in deeds for the Bell Martin Addition #2, Irving, Texas. It is binding upon all of the owners or purchasers of the lots in the said addition, his or their heirs, executors, administrators or assigns. It reads:

"No antenna or tower shall be erected upon any lot for the purpose of radio operations. William J. Hamilton resides in an apartment building in Gladstone, Missouri. He cites a clause in his lease prohibiting the erection of an antenna. He states that he has been forced to give up operating amateur radio equipment except a hand-held 2 meter (144-148 MHz) radio transceiver. He maintains that he should not be penalized just because he lives in an apartment."

Other restrictive covenants are less global in scope than those cited above. For example, Robert Webb purchased a home in Houston, Texas. His deed restriction prohibited "transmitting or receiving antennas extending above the roof line."

8. Amateur operators generally oppose restrictive covenants for several reasons. They maintain that such restrictions limit the places that they can reside if they want to pursue their hobby of amateur radio. Some state that they impinge on First Amendment rights of free speech. Others believe that a constitutional right is being abridged because, in their view, everyone has a right to access the airwaves regardless of where they live.

9. The contrary belief held by housing subdivision communities and condominium or homeowner's associations is that amateur radio installations constitute safety hazards, cause interference to other electronic equipment which may be operated in the home (televisions, radio, stereos) or are eyesores that detract from the aesthetic and tasteful appearance of the housing development or apartment complex. To counteract these negative consequences, the subdivisions and associations include in their deeds, leases or by-

laws restrictions and limitations on the location and height of antennas or, in some cases, prohibit them altogether. The restrictive covenants are contained in the contractual agreement entered into at the time of the sale or lease of the property. Purchasers or lessees are free to choose whether they wish to reside where such restrictions on amateur antennas are in effect or settle elsewhere.

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Supporting Comments

10. The Department of Defense (DOD) supported the ARRL and emphasized in its comments that continued success of existing national security and emergency preparedness telecommunications plans involving amateur stations would be severely diminished if state and local ordinances were allowed to prohibit the construction and usage of effective amateur transmission facilities. DOD utilizes volunteers in the Military Affiliate Radio Service (MARS)⁴, Civil Air Patrol (CAP) and the Radio Amateur Civil Emergency Service (RACES). It points out that these volunteer communicators are operating radio equipment installed in their homes and that undue restrictions on antennas by local authorities adversely affected their efforts. DOD states that the responsiveness of these volunteer systems would be impaired if local ordinances interfere with the effectiveness of these important national telecommunication resources. DOD favors the issuance of a ruling that would set limits for local and state regulatory bodies when they are dealing with amateur stations.

11. Various chapters of the American Red Cross also came forward to support the ARRL's request for a preemptive ruling. The Red Cross works closely with amateur radio volunteers. It believes that without amateurs' dedicated support, disaster relief operations would significantly suffer and that its ability to serve disaster victims would be hampered. It feels that antenna height limitations that might be imposed by local bodies will negatively affect the service now rendered by the volunteers.

12. Cities and counties from various parts of the United States filed comments in support of the ARRL's request for a Federal preemption ruling. The comments from the Director of Civil Defense, Port Arthur, Texas are representative:

The Amateur Radio Service plays a vital role with our Civil Defense program here in Port Arthur and the design of these antennas and towers lends greatly to our ability to communicate during times of disaster.

We do not believe that there should be any restrictions on the antennas and towers except for reasonable safety precautions. Tropical storms, hurricanes and tornadoes are a way of life here on the Texas Gulf Coast and good communications are absolutely essential when preparing for a hurricane and even more so during recovery operations after the hurricane has past.

13. The Quarter Century Wireless Association took a strong stand in favor of the issuance of a declaratory ruling. It believes that Federal preemption is necessary so that there will be uniformity for all Amateur radio installations on private property throughout the United States.

14. In its comments, the ARRL argued that the Commission has the jurisdiction to preempt certain local land use regulations which frustrate or prohibit amateur communications. It said that the appropriate standard in preemption cases is not the extent of state and local interest in a given regulation, but rather the impact of that

regulation on Federal goals. Its position is that Federal preemption is warranted whenever local governmental regulations relate adversely to the operational aspects of amateur communication. The ARRL maintains that localities routinely employ a variety of land use devices to preclude the installation of effective amateur antennas, including height restrictions, conditional use permits, building setbacks and dimensional limitations on antennas. It sees a declaratory ruling of Federal preemption as necessary to cause municipalities to accommodate amateur operator needs in land use planning efforts.

15. James C. O'Connell, an attorney who has represented several amateurs before local zoning authorities, said that requiring amateurs to seek variances or special use approval to erect reasonable antennas unduly restricts the operation of amateur stations. He suggested that the Commission preempt zoning ordinances which impose antenna height limits of less than 65 feet. He said that this height would represent a reasonable accommodation of the communication needs of most amateurs and the legitimate concerns of local zoning authorities.

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Opposing Comments

16. The City of La Mesa, California has a zoning regulation which controls amateur antennas. Its comments reflected an attempt to reach a balanced view.

This regulation has neither the intent, nor the effect, of precluding or inhibiting effective and reliable communications. Such antennas may be built as long as their construction does not unreasonably block views or constitute eyesores. The reasonable assumption is that there are always alternatives at a given site for different placement, and/or methods for aesthetic treatment. Thus, both public objectives of controlling land use for the public health, safety, and convenience, and providing an effective communications network, can be satisfied.

A blanket ruling to completely set aside local control, or a ruling which recognizes control only for the purpose of safety of antenna construction, would be contrary to . . . legitimate local control.

17. Comments from the County of San Diego state:

While we are aware of the benefits provided by amateur operators, we oppose the issuance of a preemption ruling which would elevate 'antenna effectiveness' to a position above all other considerations. We must, however, argue that the local government must have the ability to place reasonable limitations upon the placement and configuration of amateur radio transmitting and receiving antennas. Such ability is necessary to assure that the local decision-makers have the authority to protect the public health, safety and welfare of all citizens. In conclusion, I would like to emphasize an important difference between your regulatory powers and that of local governments. Your Commission's approval of the preemptive requests would establish a 'national policy'. However, any regulation adopted by a local jurisdiction could be overturned by your Commission or a court if such regulation was determined to be unreasonable.

18. The City of Anderson, Indiana, summarized some of the problems that face local communities:

I am sympathetic to the concerns of these antenna owners and I understand that to gain the maximum reception from their devices, optimal location is necessary. However, the preservation of

residential zoning districts as 'liveable neighborhoods' is jeopardized by placing these antennas in front yards of homes. Major problems of public safety have been encountered, particularly vision blockage for auto and pedestrian access. In addition, all communities are faced with various building lot sizes. Many building lots are so small that established setback requirements (in order to preserve adequate air and light) are vulnerable to the unregulated placement of these antennas. . . . the exercise of preemptive authority by the FCC in granting this request would not be in the best interest of the general public.

19. The National Association of Counties (NACO), the American Planning Association (APA) and the National League of Cities (NLC) all opposed the issuance of an antenna preemption ruling. NACO emphasized that federal and state power must be viewed in harmony and warns that Federal intrusion into local concerns of health, safety and welfare could weaken the traditional police power exercised by the state and unduly interfere with the legitimate activities of the states. NLC believed that both Federal and local interests can be accommodated without preempting local authority to regulate the installation of amateur radio antennas. The APA said that the FCC should continue to leave the issue of regulating amateur antennas with the local government and with the state and Federal courts.

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Discussion

20. When considering preemption, we must begin with two constitutional provisions. The tenth amendment provides that any powers which the constitution does not delegate to the United States or does not prohibit the states from exercising are reserved to the states. These are the police powers of the states. The Supremacy Clause, however, provides that the constitution and the laws of the United States shall supersede any state law to the contrary. Article III, Section 2. Given these basic premises, state laws may be preempted in three ways: First, Congress may expressly preempt the state law. See *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977). Or, Congress may indicate its intent to completely occupy a given field so that any state law encompassed within that field would implicitly be preempted. Such intent to preempt could be found in a congressional regulatory scheme that was so pervasive that it would be reasonable to assume that Congress did not intend to permit the states to supplement it. See *Fidelity Federal Savings & Loan Ass'n v. de la Cuesta*, 458 U.S. 141, 153 (1982). Finally, preemption may be warranted when state law conflicts with federal law. Such conflicts may occur when "compliance with both Federal and state regulations is a physical impossibility," *Florida Lime and Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142, 143 (1963), or when state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941). Furthermore, federal regulations have the same preemptive effect as federal statutes. *Fidelity Federal Savings & Loan Association v. de la Cuesta*, supra.

21. The situation before us requires us to determine the extent to which state and local zoning regulations may conflict with federal policies concerning amateur radio operators.

22. Few matters coming before us present such a clear dichotomy of viewpoint as does the instant issue. The cities, counties, and local communities and housing associations see an obligation to all of their citizens and try to address their concerns. This is accomplished through regulations, ordinances or covenants oriented toward the health, safety and general welfare of those they regulate. At the

opposite pole are the individual amateur operators and their support groups who are troubled by local regulations which may inhibit the use of amateur stations or, in some instances, totally preclude amateur communications. Aligned with the operators are such entities as the Department of Defense, the American Red Cross and local civil defense and emergency organizations who have found in Amateur Radio a pool of skilled radio operators and a readily available backup network. In this situation, we believe it is appropriate to strike a balance between the federal interest in promoting amateur operations and the legitimate interests of local governments in regulating local zoning matters. The cornerstone on which we will predicate our decision is that a reasonable accommodation may be made between the two sides.

23. Preemption is primarily a function of the extent of the conflict between federal and state and local regulation. Thus, in considering whether our regulations or policies can tolerate a state regulation, we may consider such factors as the severity of the conflict and the reasons underlying the state's regulations. In this regard, we have previously recognized the legitimate and important state interests reflected in local zoning regulations. For example, in *Earth Satellite Communications, Inc.*, 95 FCC 2d 1223 (1983), we recognized that . . . countervailing state interests inhere in the present situation . . . For example, we do not wish to preclude a state or locality from exercising jurisdiction over certain elements of an SMATV operation that properly may fall within its authority, such as zoning or public safety and health, provided the regulation in question is not undertaken as a pretext for the actual purpose of frustrating achievement of the preeminent federal objective and so long as the non-federal regulation is applied in a nondiscriminatory manner.

24. Similarly, we recognize here that there are certain general state and local interests which may, in their even-handed application, legitimately affect amateur radio facilities. Nonetheless, there is also a strong federal interest in promoting amateur communications. Evidence of this interest may be found in the comprehensive set of rules that the Commission has adopted to regulate the amateur service ⁵. Those rules set forth procedures for the licensing of stations and operators, frequency allocations, technical standards which amateur radio equipment must meet and operating practices which amateur operators must follow. We recognize the Amateur radio service as a voluntary, noncommercial communication service, particularly with respect to providing emergency communications. Moreover, the amateur radio service provides a reservoir of trained operators, technicians and electronic experts who can be called on in times of national or local emergencies. By its nature, the Amateur Radio Service also provides the opportunity for individual operators to further international goodwill. Upon weighing these interests, we believe a limited preemption policy is warranted. State and local regulations that operate to preclude amateur communications in their communities are in direct conflict with federal objectives and must be preempted.

25. Because amateur station communications are only as effective as the antennas employed, antenna height restrictions directly affect the effectiveness of amateur communications. Some amateur antenna configurations require more substantial installations than others if they are to provide the amateur operator with the communications that he/she desires to engage in. For example, an antenna array for International amateur communications will differ from an antenna used to contact other amateur operators at shorter distances. We will not, however, specify any particular height limitation below which a local government may not regulate, nor will we suggest the precise language that must be contained in local ordinances, such as mechanisms for special exceptions, variances, or conditional use permits. Nevertheless, local regulations which involve placement, screening, or height of antennas based on health,

safety, or aesthetic considerations must be crafted to accommodate reasonably amateur communications, and to represent the minimum practicable regulation to accomplish the local authority's legitimate purpose.⁶

26. Obviously, we do not have the staff or financial resources to review all state and local laws that affect amateur operations. We are confident, however, that state and local governments will endeavor to legislate in a manner that affords appropriate recognition to the important federal interest at stake here and thereby avoid unnecessary conflict with federal policy, as well as time-consuming and expensive litigation in this area. Amateur operators who believe that local or state governments have been overreaching and thereby have precluded accomplishment of their legitimate communications goals, may, in addition, use this document to bring our policies to the attention of local tribunals and forums.

27. Accordingly, the Request for Declaratory Ruling filed July 16, 1984, by the American Radio Relay League, Inc., IS GRANTED to the extent indicated herein and, in all other respects, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico
Secretary

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Footnotes

1. Public Notice, August 30, 1984, Mimeo. No. 6299, 49 F.R. 36113, September 14, 1984.
2. Public Notice, December 19, 1984, Mimeo No. 1498.
3. Order, November 8, 1984, Mimeo. No. 770.
4. MARS is solely under the auspices of the military which recruits volunteer amateur operators to render assistance to it. The Commission is not involved in the MARS program.
5. 47 CFR Part 97.
6. We reiterate that our ruling herein does not reach restrictive covenants in private contractual agreements. Such agreements are voluntarily entered into by the buyer or tenant when the agreement is executed and do not usually concern this Commission.

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'Any legislative authority that denies an application for approval of an amateur station antenna structure shall state the reasons for the denial and shall, in any litigation or on appeal, bear the burden of proving by clear and convincing evidence that the authority's actions are consistent with this section.'

AN ACT

To enact sections 303.214, 519.214, 713.082, and 5502.031 of the Revised Code to codify federal restrictions on local zoning of amateur station antenna structures thereby preserving amateur radio service communications as a Homeland Security resource and to place the burden of proof for compliance on the zoning authority.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 303.214, 519.214, 713.082, and 5502.031 of the Revised Code be enacted to read as follows:

Sec. 303.214. County rural zoning commissions, boards of county commissioners, and county boards of zoning appeals shall comply with section 5502.031 of the Revised Code.

Sec. 519.214. Township zoning commissions, boards of township trustees, and township boards of zoning appeals shall comply with section 5502.031 of the Revised Code.

Sec. 713.082. The legislative authorities of municipal corporations, planning commissions established under section 713.01 of the Revised Code, and administrative boards created under section 713.11 of the Revised Code shall comply with section 5502.031 of the Revised Code.

Sec. 5502.031. (A) As used in this section:

(1) "Amateur radio service" means the amateur service, the amateur-satellite service, and the radio amateur civil emergency service as provided for under 47 C.F.R. part 97.

(2) "Amateur station" means a station in an amateur radio service consisting of the apparatus necessary for carrying on radio communications.

(3) "Legislative authority" means the following:

(a) With respect to a county, any county rural zoning commission, board of county commissioners, or county board of zoning appeals:

(b) With respect to a township, any township zoning commission, board of township trustees, or township board of zoning appeals:

(c) With respect to a municipal corporation, the legislative authority of any municipal corporation, a planning commission established under section

713.01 of the Revised Code, or an administrative board created under section 713.11 of the Revised Code.

(B) Sections 303.01 to 303.25, 303.99, 519.01 to 519.25, 519.99, and 713.06 to 713.15 of the Revised Code do not confer on any legislative authority the authority to preclude amateur radio service communications. Any rules adopted under those sections by a legislative authority to regulate amateur radio service shall comply with the following limitations:

(1) The legislative authority shall not restrict the height or location of amateur station antenna structures in such a way as to prevent effective amateur radio service communications and shall comply with 47 C.F.R. 97.15.

(2) The rules shall reasonably accommodate amateur station communications and shall constitute the minimum practicable regulation necessary to accomplish the legislative authority's purpose.

(C) Any legislative authority that denies an application for approval of an amateur station antenna structure shall state the reasons for the denial and shall, on appeal, bear the burden of proving that the authority's actions are consistent with this section.

Sub. H. B. No. 158

129th G.A.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

Sub. H. B. No. 158

129th G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
____ day of _____, A. D. 20 ____.

Secretary of State.

File No. _____ Effective Date _____

Public Act 097-0720

HB1390 Enrolled

LRB097 07768 KMW 47880 b

AN ACT concerning local government.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Illinois Municipal Code is amended by adding
Section 11-13-1.5 as follows:

(65 ILCS 5/11-13-1.5 new)

Sec. 11-13-1.5. Amateur radio communications; antenna regulations. Notwithstanding any provision of law to the contrary, no ordinance or resolution may be adopted or enforced by a municipality after the effective date of this amendatory Act of the 97th General Assembly that affects the placement, screening, or height of antennas or antenna support structures that are used for amateur radio communications unless the ordinance or resolution: (i) has a reasonable and clearly defined aesthetic, public health, or safety objective and represents the minimum practical regulation that is necessary to accomplish the objectives; and (ii) reasonably accommodates amateur radio communications.

A municipality may not regulate the antennas or antenna support structures that are used for amateur radio communications in a manner inconsistent with this Section. This Section is a limitation under subsection (i) of Section 6 of Article VII of the Illinois Constitution on the concurrent exercise by home rule units of powers and functions exercised by the State.

Section 99. Effective date. This Act takes effect upon becoming law.

Effective Date: 6/29/2012

Indiana



April 8, 2003

ENGROSSED
SENATE BILL No. 109

DIGEST OF SB 109 (Updated April 7, 2003 7:11 PM - DI 75)

Citations Affected: IC 36-7.

Synopsis: Regulation of amateur radio antennas. Requires a municipality or county to comply with an FCC ruling concerning amateur radio preemption or a regulation related to amateur radio service.

Effective: July 1, 2003.

**Antich, Riegsecker, Waterman, Sipes,
Nugent, Young R Michael, Landske,
Alting**

(HOUSE SPONSORS — AGUILERA, LUTZ J)

January 7, 2003, read first time and referred to Committee on Governmental Affairs and Interstate Cooperation.
February 13, 2003, reported favorably — Do Pass.
February 17, 2003, read second time, ordered engrossed. Engrossed.
February 20, 2003, read third time, passed. Yeas 41, nays 8.

HOUSE ACTION

March 4, 2003, read first time and referred to Committee on Technology, Research, and Development.
April 2, 2003, recommitted to Committee on Rules and Legislative Procedures.
April 8, 2003, amended, reported — Do Pass.

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ES 109—LS 6341/DI 87+



April 8, 2003

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

ENGROSSED SENATE BILL No. 109

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 36-7-5.2 IS ADDED TO THE INDIANA CODE
2 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2003]:

4 **Chapter 5.2. Regulation of Amateur Radio Antennas**

5 **Sec. 1. A municipality or county may not enact or enforce an**
6 **ordinance, a resolution, or an order that does not comply with the**
7 **ruling of the Federal Communications Commission in "Amateur**
8 **Radio Preemption, 101 FCC.2d 952 (1985)" or a regulation related**
9 **to the amateur radio service adopted under 47 CFR Part 97.**

10 **Sec. 2. If a municipality or county adopts an ordinance, a**
11 **resolution, or an order involving the placement, screening, or**
12 **height of an amateur radio antenna based on health, safety, or**
13 **aesthetic conditions, the ordinance, resolution, or order must:**

14 (1) reasonably accommodate amateur radio communications;

15 and

16 (2) represent the minimal regulation practicable to
17 accomplish the municipality's or county's legitimate purpose.

ES 109—LS 6341/DI 87+



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1 **Sec. 3. This chapter does not prohibit a municipality or county**
2 **from taking action to protect or preserve a historic, a historical, or**
3 **an architectural district that is established by the municipality or**
4 **county or under state or federal law.**

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SENATE MOTION

Mr. President: I move that Senators Riegsecker and Waterman be added as coauthors of Senate Bill 109.

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ES 109—LS 6341/DI 87+



COMMITTEE REPORT

Mr. President: The Senate Committee on Governmental Affairs and Interstate Cooperation, to which was referred Senate Bill No. 109, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 109 as introduced.)

RIEGSECKER, Chairperson

Committee Vote: Yeas 5, Nays 3.

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ES 109—LS 6341/DI 87+



SENATE MOTION

Mr. President: I move that Senator Sipes be added as coauthor of Senate Bill 109.

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SENATE MOTION

Mr. President: I move that Senator Nugent be added as coauthor of Senate Bill 109.

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SENATE MOTION

Mr. President: I move that Senators Young R Michael and Landske be added as coauthors of Senate Bill 109.

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SENATE MOTION

Mr. President: I move that Senator Alting be added as coauthor of Senate Bill 109.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Rules and Legislative Procedures, to which was referred Senate Bill 109, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, delete lines 1 through 3.

Page 2, line 4, delete "4." and insert "3."

and when so amended that said bill do pass.

(Reference is to SB 109 as printed February 14, 2003.)

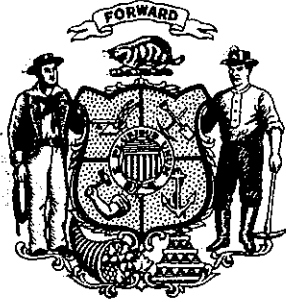
PELATH, Chair

Committee Vote: yeas 9, nays 0.

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State of Wisconsin



2001 Assembly Bill 368

Date of enactment: April 2, 2002
Date of publication*: April 16, 2002

2001 WISCONSIN ACT 50

AN ACT to create 59.69 (4f), 60.61 (3d) and 62.23 (7) (hf) of the statutes; relating to: the authority of cities, villages, towns, and counties to regulate amateur radio antennas and antenna support structures.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 59.69 (4f) of the statutes is created to read:

59.69 (4f) **AMATEUR RADIO ANTENNAS.** The board may not enact an ordinance or adopt a resolution on or after the effective date of this subsection [revisor inserts date], or continue to enforce an ordinance or resolution on or after the effective date of this subsection [revisor inserts date], that affects the placement, screening, or height of antennas, or antenna support structures, that are used for amateur radio communications unless all of the following apply:

(a) The ordinance or resolution has a reasonable and clearly defined aesthetic, public health, or safety objective, and represents the minimum practical regulation that is necessary to accomplish the objectives.

(b) The ordinance or resolution reasonably accommodates amateur radio communications.

SECTION 2. 60.61 (3d) of the statutes is created to read:

60.61 (3d) **AMATEUR RADIO ANTENNAS.** The town board may not enact an ordinance or adopt a resolution on or after the effective date of this subsection [revisor inserts date], or continue to enforce an ordinance or resolution on or after the effective date of this subsection

[revisor inserts date], that affects the placement, screening, or height of antennas, or antenna support structures, that are used for amateur radio communications unless all of the following apply:

(a) The ordinance or resolution has a reasonable and clearly defined aesthetic, public health, or safety objective, and represents the minimum practical regulation that is necessary to accomplish the objectives.

(b) The ordinance or resolution reasonably accommodates amateur radio communications.

SECTION 3. 62.23 (7) (hf) of the statutes is created to read:

62.23 (7) (hf) **Amateur radio antennas.** The governing body of a city may not enact an ordinance or adopt a resolution on or after the effective date of this paragraph [revisor inserts date], or continue to enforce an ordinance or resolution on or after the effective date of this paragraph [revisor inserts date], that affects the placement, screening, or height of antennas, or antenna support structures, that are used for amateur radio communications unless all of the following apply:

1. The ordinance or resolution has a reasonable and clearly defined aesthetic, public health, or safety objective, and represents the minimum practical regulation that is necessary to accomplish the objectives.

2. The ordinance or resolution reasonably accommodates amateur radio communications.

* Section 991.11, WISCONSIN STATUTES 1999-00: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

AN ACT

To enact sections 303.214, 519.214, 713.082, and 5502.031 of the Revised Code to codify federal restrictions on local zoning of amateur station antenna structures thereby preserving amateur radio service communications as a Homeland Security resource and to place the burden of proof for compliance on the zoning authority.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 303.214, 519.214, 713.082, and 5502.031 of the Revised Code be enacted to read as follows:

Sec. 303.214. County rural zoning commissions, boards of county commissioners, and county boards of zoning appeals shall comply with section 5502.031 of the Revised Code.

Sec. 519.214. Township zoning commissions, boards of township trustees, and township boards of zoning appeals shall comply with section 5502.031 of the Revised Code.

Sec. 713.082. The legislative authorities of municipal corporations, planning commissions established under section 713.01 of the Revised Code, and administrative boards created under section 713.11 of the Revised Code shall comply with section 5502.031 of the Revised Code.

Sec. 5502.031. (A) As used in this section:

(1) "Amateur radio service" means the amateur service, the amateur-satellite service, and the radio amateur civil emergency service as provided for under 47 C.F.R. part 97.

(2) "Amateur station" means a station in an amateur radio service consisting of the apparatus necessary for carrying on radio communications.

(3) "Legislative authority" means the following:

(a) With respect to a county, any county rural zoning commission, board of county commissioners, or county board of zoning appeals:

(b) With respect to a township, any township zoning commission, board of township trustees, or township board of zoning appeals:

(c) With respect to a municipal corporation, the legislative authority of any municipal corporation, a planning commission established under section

713.01 of the Revised Code, or an administrative board created under section 713.11 of the Revised Code.

(B) Sections 303.01 to 303.25, 303.99, 519.01 to 519.25, 519.99, and 713.06 to 713.15 of the Revised Code do not confer on any legislative authority the authority to preclude amateur radio service communications. Any rules adopted under those sections by a legislative authority to regulate amateur radio service shall comply with the following limitations:

(1) The legislative authority shall not restrict the height or location of amateur station antenna structures in such a way as to prevent effective amateur radio service communications and shall comply with 47 C.F.R. 97.15.

(2) The rules shall reasonably accommodate amateur station communications and shall constitute the minimum practicable regulation necessary to accomplish the legislative authority's purpose.

(C) Any legislative authority that denies an application for approval of an amateur station antenna structure shall state the reasons for the denial and shall, on appeal, bear the burden of proving that the authority's actions are consistent with this section.

Sub. H. B. No. 158

129th G.A.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

Sub. H. B. No. 158

129th G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
____ day of _____, A. D. 20 ____.

Secretary of State.

File No. _____ Effective Date _____



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-2772/1
MES:jld:pg

2001 ASSEMBLY BILL 368

May 3, 2001 - Introduced by Representatives WADE, ALBERS, KESTELL, KREUSER, LOEFFELHOLZ, NASS, OLSEN, PLOUFF, SCHNEIDER, SERATTI, STARZYK and TOWNSEND, cosponsored by Senators RISSER, SCHULTZ, GROBSCHMIDT and COWLES. Referred to Committee on Urban and Local Affairs.

- 1 **AN ACT to create** 59.69 (4f), 60.61 (3d) and 62.23 (7) (hf) of the statutes; **relating**
- 2 **to:** the authority of cities, villages, towns, and counties to regulate amateur
- 3 radio antennas and antenna support structures.

Analysis by the Legislative Reference Bureau

Under current law, no city, village, town, or county (political subdivision) may enact or enforce an ordinance or resolution that affects satellite antennas with a diameter of two feet or less unless one of several conditions applies. The conditions include a requirement that the ordinance or resolution have a reasonable and clearly defined aesthetic, public health, or safety objective, or a requirement that the ordinance or resolution does not impose an unreasonable limitation on, or prevent the reception of, satellite-delivered signals by a satellite antenna with a diameter of two feet or less.

Under this bill, no political subdivision may enact or enforce an ordinance or resolution that affects the placement, screening, or height of amateur radio antennas or antenna support structures unless the regulation has a reasonable and clearly defined aesthetic, public health, or safety objective; represents the minimum practical regulation that is necessary to accomplish the objectives; and reasonably accommodates amateur radio communications.

ASSEMBLY BILL 368

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 59.69 (4f) of the statutes is created to read:

2 **59.69 (4f) AMATEUR RADIO ANTENNAS.** The board may not enact an ordinance or
3 adopt a resolution on or after the effective date of this subsection [revisor inserts
4 date], or continue to enforce an ordinance or resolution on or after the effective date
5 of this subsection [revisor inserts date], that affects the placement, screening, or
6 height of antennas, or antenna support structures, that are used for amateur radio
7 communications unless all of the following apply:

8 (a) The ordinance or resolution has a reasonable and clearly defined aesthetic,
9 public health, or safety objective, and represents the minimum practical regulation
10 that is necessary to accomplish the objectives.

11 (b) The ordinance or resolution reasonably accommodates amateur radio
12 communications.

13 **SECTION 2.** 60.61 (3d) of the statutes is created to read:

14 **60.61 (3d) AMATEUR RADIO ANTENNAS.** The town board may not enact an
15 ordinance or adopt a resolution on or after the effective date of this subsection
16 [revisor inserts date], or continue to enforce an ordinance or resolution on or after the
17 effective date of this subsection [revisor inserts date], that affects the placement,
18 screening, or height of antennas, or antenna support structures, that are used for
19 amateur radio communications unless all of the following apply:

ASSEMBLY BILL 368

1 (a) The ordinance or resolution has a reasonable and clearly defined aesthetic,
2 public health, or safety objective, and represents the minimum practical regulation
3 that is necessary to accomplish the objectives.

4 (b) The ordinance or resolution reasonably accommodates amateur radio
5 communications.

6 **SECTION 3.** 62.23 (7) (hf) of the statutes is created to read:

7 62.23 (7) (hf) *Amateur radio antennas.* The governing body of a city may not
8 enact an ordinance or adopt a resolution on or after the effective date of this
9 paragraph [revisor inserts date], or continue to enforce an ordinance or resolution
10 on or after the effective date of this paragraph [revisor inserts date], that affects
11 the placement, screening, or height of antennas, or antenna support structures, that
12 are used for amateur radio communications unless all of the following apply:

13 1. The ordinance or resolution has a reasonable and clearly defined aesthetic,
14 public health, or safety objective, and represents the minimum practical regulation
15 that is necessary to accomplish the objectives.

16 2. The ordinance or resolution reasonably accommodates amateur radio
17 communications.

18 (END)